



# The Walt Disney Company, Inc.

Kenneth E. Newman  
Senior Vice President  
Eastern Regional Counsel

DEC 30 11 30 AM '98

December 29, 1998

Lawrence M. Noble, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E. Street, N.W.  
Washington, DC 20463

Re: MUR 4863

Dear Mr. Noble:

I write on behalf of The Walt Disney Company ("TWDC") in response to a November 16, 1998 complaint (the "Complaint") filed with the Federal Election Commission ("FEC" or the "Commission") by Daniel L. Grant of Towaco, New Jersey.

As a threshold matter, TWDC requests dismissal from the Complaint because it is improperly named as a respondent. The subject matter of the Complaint is a radio program broadcast on WABC (AM). WABC - AM Radio, Inc., licensee of radio station WABC (AM), is an indirect subsidiary of ABC, Inc., which in turn is an indirect subsidiary of TWDC. TWDC may not properly be held accountable for the activities complained of, for the reasons set forth below and in the Affidavit of Kenneth E. Newman ("Newman Aff.") submitted herewith.

Clearly, mere ownership of a subsidiary is an insufficient legal basis upon which to hold a parent company responsible for the operations of its indirect subsidiaries. Cf. Mylan Laboratories, Inc. v. Akzo, N.V., 2 F.3d 56, 61 (4<sup>th</sup> Cir. 1993) (applying agency test in deciding whether to pierce the corporate veil for jurisdictional purposes); Zinaman v. USTS New York, Inc., 798 F. Supp. 128, 131 (S.D.N.Y. 1992) (alter ego liability requires, *inter alia*, that the parent exercise such complete domination that the subsidiary had no separate will of its own); Grill v. The Walt Disney Co., 683 F. Supp. 66 (S.D.N.Y. 1988) (activities of subsidiary not sufficient to confer jurisdiction over parent); AO 1998-11 ("a [bank] holding company is considered a distinct legal entity in its own right, apart from its subsidiaries," and not subject to political contribution prohibition imposed on subsidiary); AO 1989-29 (recognizing the distinction between parent and subsidiary).



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TWDC does not, as a matter both of policy and consistent practice, manage or direct the day to day operations or affairs of ABC, Inc. or any of its subsidiaries -- including WABC-AM Radio, Inc. -- or their employees. See Newman Aff., ¶ 2. Each subsidiary company conducts its day to day business as a separate corporation, and not as an agent of TWDC. Id. Moreover, each subsidiary company maintains separate offices, employee, books, records, and bank accounts. Id. ¶ 2. Thus, we submit this proceeding should be dismissed as to TWDC on this basis.

Without limiting or detracting from the foregoing in any respect, TWDC also adopts and incorporates herein by reference, the joint response to the subject Complaint submitted on behalf of Sean Hannity, WABC-AM Radio, Inc., and ABC, Inc.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth E. Newman", with a long, sweeping horizontal stroke extending to the right.

Kenneth E. Newman

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ELECTION COMMISSION

RE: MUR 4863

**AFFIDAVIT OF  
KENNETH E. NEWMAN**

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK ) ss:

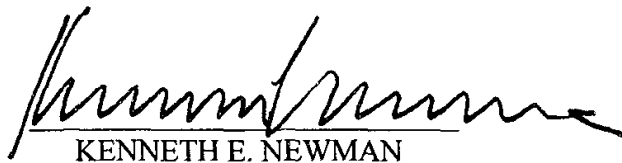
KENNETH E. NEWMAN, being duly sworn, deposes and says:

1. I am Senior Vice President - Eastern Regional Counsel and Assistant Secretary of The Walt Disney Company ("TWDC"), a respondent to the above listed Complaint. I make this Affidavit, based on personal knowledge of the organization and records of TWDC and its subsidiaries, in response to the Complaint filed with the Federal Election Commission on November 16, 1998, by Daniel L. Grant of Towaco, New Jersey.

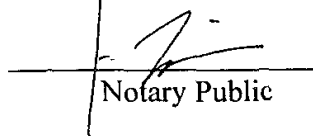
2. TWDC is a Delaware corporation with its principal place of business in Burbank, California. TWDC's sole business consists of the ownership of various subsidiaries which license, market, sell, distribute and/or advertise entertainment products, operate theme parks and conduct other business. TWDC does not manage or direct the day to day operations of those subsidiaries, and maintains separate records, bank accounts, officers and directors from such subsidiaries.

3. More specifically TWDC does not produce, market or distribute radio programs, including the radio program the "Sean Hannity Show" with which this Complaint is concerned. That radio program is broadcast on radio station WABC (AM). WABC-AM Radio, Inc. ("WABC") is a licensee of radio station WABC (AM). WABC is a Delaware corporation, which is an indirect subsidiary of ABC, Inc. ("ABC"), which in turn is an indirect subsidiary of TWDC. TWDC does not manage or direct the day to day operations or affairs of ABC or WABC; the two corporations maintain separate books, records, bank and other accounts, officers and employees.

Further affiant sayeth not.

  
KENNETH E. NEWMAN

Sworn to before me this  
29th day of December, 1998

  
Notary Public

**ALEC M. LIPKIND**  
Notary Public, State of New York  
No. 02LI5026386  
Qualified in New York County  
Commission Expires April 18, 2000



The WALT DISNEY Company, Inc.

Office of Counsel

December 29, 1998

Lawrence M. Noble, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E. Street, N.W.  
Washington, DC 20463

Re: MUR 4863

Dear Mr. Noble:

This is to advise you that as of the date hereof, the undersigned shall be substituted as counsel of record for respondent, The Walt Disney Company ("TWDC") in the above listed matter in lieu of David Cohen who was previously listed as counsel of record pursuant to a letter dated December 14, 1998.

The undersigned are authorized to receive any notifications and other communications from the Commission and to act on TWDC's behalf before the Commission.

Sincerely,

Kenneth E. Newman  
Senior Vice President, Eastern Regional Counsel

Muriel Alix Caplan  
Senior Counsel